

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 547 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KHUSALDAS JETHABHAT

Versus

NANABHAI NATHUBHAI

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Appearance:

MR UP Vyas for MrBHARAT J SHELAT for Petitioners  
MR Mukund Nagorkar for Mr SN SHELAT for  
Respondents.

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 21/03/97

ORAL JUDGEMENT

The respondents are the legal heirs and representatives of the original plaintiff landlord and the petitioners are the original defendants tenants. They are hereinafter referred to as the landlords and tenants for the sake of convenience and brevity.

The tenants have questioned the legality and validity of the judgment and decree recorded in Regular Civil Appeal No.40/78. The original plaintiffs are the owners of property bearing Nondh No.1272 of Ward No.3 in the city of Surat; that the said property consists of 5 sheds and out of the said 5 sheds, 4 sheds were given on lease to the defendant-tenants. Earlier the landlords had filed Regular Civil Suit No.1038/65 against the tenants wherein the standard rent of the demise premises came to be fixed at Rs.125/- per month.

The tenants were in arrears of rent from 1.2.70. Therefore, notice was served on the tenants demanding arrears of rent of more than six months. Notice was not complied with. Therefore the landlords filed Regular Civil Suit No.1199/70 in the court of Civil Judge (S.D.), Surat which was transferred to Small Cause Court on its establishment at Surat and the regular Civil Suit on transfer to Small Causes Court was renumbered as Small Cause Suit No.2568 of 1975. The tenants appeared and resisted the suit by filing written statement, inter alia, contending that standard rent should be fixed afresh in view of the reduction in the facilities. It was not disputed that earlier standard rent was fixed at Rs.125/- per month. But the tenants contended that in view of the damage to the demise premises and the reduction in the facilities, there was a fit case for refixation of the standard rent. It was also contended that there was no case for eviction on the ground of non-payment of rent.

After framing issues upon pleadings Ex.15 and considering the evidence, the Trial Court held that standard rent of the demise premises was fixed earlier and the tenants are not entitled to agitate the same issue again. Since the dispute of standard rent was raised, it was fixed at Rs.125/- holding that there was no case for refixation. The Trial Court found that it was a case of section 12(3)(b) of the Bombay Rent Act and the tenants had deposited all the arrears of rent and were entitled to the protection of section 12(3)(b). Therefore, the suit for possession came to be dismissed. Upon an appeal before the District Court, the judgment and decree of the Trial Court came to be reversed. The appellate Court granted decree for possession on the ground of non-payment of rent under section 12(3)(b). Hence this revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act) at the instance of unsuccessful tenants.

The appellate Court upon appreciation of the facts and

circumstances of the case found that the tenants are not entitled to protection of section 12(3)(b) of the Bombay Rent Act as the tenants had failed to deposit rent regularly in the court. The appellate Court rejected the contention of the tenants that they were ready and willing to pay the rent and, therefore, they were protected.

The appellate Court found that the tenants were in arrears of rent, but the provisions of section 12(3)(b) applied and 12(3)(a) of the Bombay Rent Act were not attracted. The appellate Court rejected the contention of the tenants that there was a fit case for refixing the standard rent. It was held that fixation of standard rent at the rate of Rs.125/- per month in the previous litigation was on merits and not by consent, there was no reduction in the facilities or dimensions of the premises requiring fresh consideration. However, it was held that since in view of the liability for payment of education cess on the part of the payment which was not payable monthly, the case fell within the ambit of section 12(3)(b) of the Bombay Rent Act. The appellate Court has observed in para 11, 12 and 13 of the judgment that the tenants were not regular in paying or making deposits of arrears of rent regularly during the pendency of appeal. In the opinion of the appellate Court, the tenants were not ready and willing to pay rent and they were not entitled to the protection of section 12(3)(b) of the Bombay Rent Act as rent was not regularly deposited during the pendency of the appeal. In the opinion of the appellate Court, the tenants were not ready and willing to pay rent and they were not entitled to the protection of section 12(3)(b) of the Bombay Rent Act as rent was not regularly deposited during the pendency of the appeal. Defaults in payment of rent or depositing the rent in court are highlighted in para 13 of the judgment. The tenants did not deposit the arrears of rent regularly and committed many defaults. Thus the requirements of the provisions of section 12(3)(b) for the purpose of seeking protection were not satisfied. Therefore, the appellate Court reversed the decree for possession refused by the Trial Court and granted decree of eviction against the tenants on the ground of non-payment of rent under section 12(3)(b) of the Bombay Rent Act.

There is no dispute about the fact that amended provisions of section 12(3)(b) as amended by Gujarat Act 7 of 1985 deleting the word 'regularly' are held to be applicable prospectively and not retrospectively in view of the Division Bench decision of this Court rendered in

Sakarbai Devraj vs. Ibrahim,, 1994 (2) GLR 1092. Therefore, the amended provisions of section 12(3)(b) deleting the word 'regularly' will not be applicable to the present case. The case is, therefore, governed by provisions of section 12(3)(b) as it then stood before the amendment where the word 'regularly' was very much in the section.

Insofar as provisions of section 12(3)(b) are concerned, it may be noted that the said provisions will apply to the following cases --

(i) where arrears of rent was for less than six months, or

(ii) where entire rent is not payable monthly;

(iii) where the dispute about standard rent and/or permitted increases has been raised within a period of one month after receipt of notice under section 12(3).

The appellate court has, rightly, found that the present case is governed by provisions of section 12(3)(b). A tenant who seeks protection of provisions of section 12(3)(b) before amendment which came into force in 1985 is obliged to satisfy the following conditions:

(i) On the first day of hearing of the suit for arrears on the ground of non-payment of rent or on any other day as the court may direct upon request of the party, the tenant has paid the entire arrears of rent and permitted increases then due to the landlord.

(ii) tenant must continue to pay regularly during the pendency of the suit such rent and permitted increases periodically as the court may specify and also during the pendency of the appeal as it is in continuation of the suit.

The aforesaid conditions must be satisfied and they must co-exist for seeking protection against eviction on the ground of non-payment of rent under section 12(3)(b).

The tenant seeking protection under these provisions has to be vigilant and has to take steps to comply with the aforesaid conditions.

The Hon'ble Apex Court in Ganpat vs. Sashikant, AIR 1978 SC 955 has clearly held that in order to seek protection of provisions of section 12(3)(b), the tenant must comply

with the conditions laid down in the said provisions. The court cannot exercise discretion in favour of the tenant who has not fulfilled the conditions. If there is statutory default or neglect on the part of the tenant, whatever may be the cause, the landlord acquires a right under section 13(3)(b) for getting decree for possession. A tenant who is a defaulter and who failed to comply with the conditions set out in section 12(3)(b) cannot be given protection and he cannot be allowed to defeat the landlord's claim for eviction. It is unequivocally held by the Hon'ble Supreme Court in the aforesaid decision that section 12(3)(b) does not create any discretionary jurisdiction in the court.

In *Mranalini B. Shah vs. B.M.Shah*, AIR 1980 SC 954 the Honourable Apex Court has also expounded the relevant position of law emerging from the provisions of section 12(3)(b). It is clearly found in the said decision that payment of rent and permitted increases must be paid regularly during the pendency of the suit. The term 'regularly' is held to be mandatory and not directory. In case of monthly tenancy, the court has no discretion to treat payment made at irregular intervals as sufficient compliance. It is observed that if the tenant persistently defaults during the pendency of the suit or appeal in paying the rent, such as where he pays it at irregular intervals of 2 or 3 or 4 months - as is the case in the present case, the court has no discretion to treat what were manifestly irregular payments, as substantial compliance with the mandate of provisions of section 12(3)(b). Thus, the proposition of law enunciated by the Hon'ble Supreme Court in *Ganpat Ladha* (supra) has been approved and followed in *Mranalini's* case.

After having examined the relevant legal settings and considering the same in the backdrop of the facts, this court has no hesitation in finding that the present petition is meritless and the impugned judgment and decree are required to be confirmed and affirmed. Accordingly, this petition is dismissed with costs. Rule discharged.

At this stage, time was sought on behalf of the petitioners for vacating the premises. It was contended that the petitioners may be protected and granted reasonable time for vacating the premises in view of the paucity of housing accommodations. Having regard to the facts and circumstances, the petitioner-tenants are granted time and protected from being evicted pursuant to the decree for possession till the end of December 1997

on the following conditions:

- (i) The tenants shall pay all arrears on or before 31st March 1997 along with costs before the trial court.
- (ii) The petitioner tenants shall file an undertaking before this Court which shall incorporate usual terms and shall also include a term that they are in physical possession of the demise premises and that they shall handover peaceful vacant possession on or before 31.12.1997 and that they shall not part with, transfer, assign or deal with the rented premises in any manner whatsoever till actual physical possession of the demise premises is delivered to the land lord.

In case of failure of the aforesaid terms and conditions, the protection given to the petititioner-tenants and stay of eviction decree till 31st December 1997 shall automatically stand vacated.

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